



**CITY OF LODI
COUNCIL COMMUNICATION**

AGENDA TITLE: Adopt resolution authorizing the City Manager to execute the Electric Service Base Resource Percentage Agreement 00-SNR-00327 for Western Area Power Administration between Northern California Power Agency and the City of Lodi (EUD)

MEETING DATE: November 17, 2004

PREPARED BY: Electric Utility Director

RECOMMENDED ACTION: That the City Council adopt a resolution authorizing the City Manager to execute the Electric Service Base Resource Percentage Agreement 00-SNR-00327 for Western Area Power Administration between Northern California Power Agency and the City of Lodi.

BACKGROUND INFORMATION: Due to the changes with Western and the California Independent System Operator (CALISO), the City of Lodi's Western Base Resource Contract 00-SNR-00327, will need to be formally assigned to NCPA for power pool assignments to obtain maximum resource benefit effective January 01, 2005. The current power pool assignments are performed by NCPA and have been for a number of years. By participating in a power pool with Western resource, NCPA brings \$300,000 to \$2,000,000 of an annual benefit to all NCPA members including the City of Lodi by implementing these assignments.

Attached are two agreements. Agreement 1 (Assignment) is a two-page agreement whereby we can assign our Western "Base Resource Percentage" (BRP) and thereby save money on our purchased power bill. Agreement 2 is a multipage Assignment Administration Agreement (AAA) to define how we would share these savings with the other assignors; who, without which there would be no savings to share.

Assignment of BRP - Western has provided Lodi with an opportunity to assign our BRP to NCPA so that assignors may all *jointly* save perhaps up to a few million dollars per year - primarily through reduced transmission costs, but also through a more efficient scheduling of Western energy.

Assignment Administration Agreement - Although the required formalities for sharing the savings may have resulted in a rather detailed agreement, this AAA relies on only a handful of principles that are presumed to reflect traditional, jointly held, Member values:

- 1) No Member will become worse off from joint action - this Assignment saves cash.
- 2) Any Member can change its mind - you can revoke your Assignment on short notice.
- 3) Every Member controls its own destiny - your AAA can't be changed without your consent.
- 4) All Members share and share alike; *proportionately* - *half* to sources and *half* to sinks.
- 5) Only Members that are Assignors can vote on the AAA terms to assign and save after 12/31/2004.

APPROVED:

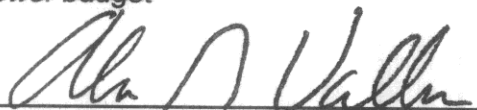
Janet S. Keeter, Interim City Manager

Adopt resolution authorizing the City Manager to execute the Electric Service Base Resource Percentage Agreement 00-SNR-00327 for Western Area Power Administration between Northern California Power Agency and the City of Lodi (EUD)

November 17, 2004

Page 2 of 2

FUNDING: None. Within current power budget



Alan N. Vallow
Electric Utility Director

PREPARED BY: Mel Grandi, Manager, Electric Services

ANV/MG/lst

Attachments

cc: City Attorney

REQUEST FOR ASSIGNMENT OF
CITY OF LODI'S
BASE RESOURCE PERCENTAGE
TO NORTHERN CALIFORNIA POWER AGENCY

1. **BACKGROUND:**

1.1 The City of Lodi ("Lodi") is a municipal corporation, organized and existing under the laws of the State of California.

1.2 Lodi has entered into Contract 00-SNR-00327, dated August 16, 2000, with Western Area Power Administration (Western), which provides 0.49049 with a percentage of Western's Base Resource power beginning January 2005.

1.3 The Northern California Power Agency (NCPA) is a joint powers agency, organized and existing under the laws of the State of California.

1.4 Lodi is a member of NCPA.

1.5 As a member of NCPA, Lodi desires to have Western assign Lodi's Base Resource Percentage under Contract 00-SNR-00327 to NCPA so that NCPA may create a power resource portfolio for the mutual benefit of qualified NCPA members.

2. **ASSIGNMENT OF BASE RESOURCE PERCENTAGE:**

2.1 Lodi hereby requests assignment of its 0.49049 percentage of the Base Resource under Exhibit A to Contract 00-SNR-00327 to NCPA.

2.2 NCPA is agreeable to taking responsibility for Lodi's 0.49049 percentage of the Base Resource.

2.3 Lodi shall retain its Base Resource Contract 00-SNR-00327 with a 0.49049 percent of the Base Resource during the term of assignment to NCPA.

2.4 Any allocation changes made pursuant to the 2004 Power Marketing Plan shall apply to the Base Resource Percentage referred to in Section 2.1 of this Assignment, regardless of the contract under which the allocation is being administered.

2.5 No action will be required of Lodi under Contract 00-SNR-00327 during the time that NCPA is holding Lodi's Base Resource Percentage under Contract 00-SNR-00327.

2.6 The Assignment shall remain in full force and effect until the earlier of:

- 2.6.1 December 31, 2024; or
- 2.6.2 Sixty (60) days after Western has approved Lodi's written request for reassignment of its Base Resource Percentage, which approval shall not be unreasonably withheld or delayed.

2.7 NCPA and Lodi shall jointly and severally indemnify and hold Western harmless from and against all claims, damages, losses, and expenses, including attorney's fees, arising out of or resulting from the Assignment.

3. **AGREEMENT:**
All parties to the Assignment hereby agree that the Assignment will become effective on the first day of the first month following the date of approval by the Administrator of the Western Area Power Administration or a later date if agreed to by Western and Lodi.

CITY OF LODI	NORTHERN CALIFORNIA POWER AGENCY
By: _____ Janet S. Keeter	By: _____
Title: _____ Interim City Manager	Title: _____
Address: P.O. Box 3006	Address: _____
_____	_____
Lodi, CA 95241-1910	

Attest:

By: _____
 Susan J. Blackston, City Clerk

Date: _____

Approved as to Form:

By: _____
 D. Stephen Schwabauer, City Attorney

The above Request for Assignment of City of Lodi's Base Resource Percentage under Contract 00-SNR-00327 to the Northern California Power Agency is hereby approved.

Date: _____

Michael S. HacsKaylo, Administrator
Western Area Power Administration

ASSIGNMENT ADMINISTRATION AGREEMENT

FOR

WESTERN AREA POWER ADMINISTRATION BASE RESOURCE PERCENTAGE

Between

NORTHERN CALIFORNIA POWER AGENCY

and

CITY OF LODI

ASSIGNMENT ADMINISTRATION AGREEMENT

TABLE OF CONTENTS

Recitals

Section 1:	Definitions.
Section 2:	NCPA Duties
Section 3:	Assignor Duties
Section 4:	Allocations
Section 5:	Resource Planning
Section 6:	Resource Sale and Purchase
Section 7:	O&M Funding and Restoration
Section 8:	Central Dispatch and Scheduling Services
Section 9:	Accounting
Section 10:	Metering
Section 11:	Billing
Section 12:	Administrative Cost Allocation
Section 13:	Other Agreements
Section 14:	Western Systems Coordinating Council
Section 15:	Term of Agreement
Section 16:	Notices
Section 17:	Waiver of Defaults
Section 18:	Uncontrollable Forces
Section 19:	Liability
Section 20:	Reports and Records
Section 21:	Assignment of Agreement
Section 22:	Settlement of Disputes and Arbitration
Section 23:	Amendments
Section 24:	Severability

Section 25: Governing Law.

ASSIGNMENT ADMINISTRATION AGREEMENT

This Assignment Administration Agreement, hereinafter referred to as the "Agreement", is made and entered into by and between the City of Lodi and the Northern California Power Agency.

WITNESSETH:

WHEREAS, the Northern California Power Agency, hereinafter referred to as "NCPA", has heretofore been duly established as a public agency pursuant to the Joint Exercise of Powers Act of the Government Code of the State of California and, among other things, is authorized to acquire, construct, finance, and operate buildings, works, facilities and improvements for the generation and transmission of electric capacity and energy for resale; and

WHEREAS, City of Lodi, hereinafter referred to as "Assignor" is a member in good standing of the Northern California Power Agency; and

WHEREAS, as a member of NCPA, Assignor entered into Contract 00-SNR-00327 (Assignment Contract), dated August 16, 2000, whereby Assignor assigned its Base Resource Percentage under this contract to NCPA in order for NCPA to create a power resource portfolio for the mutual benefit of participating NCPA members beginning January 1, 2005.

WHEREAS, NCPA has agreed to accept assignment of Assignor's Base Resource Percentage, and will administer the Assignment Contract for the benefit of Assignor according to the terms of this Assignment Administration Agreement; and

WHEREAS, it is intended that the Assignor will receive an economic benefit from assigning its Western Area Power Administration Base Resource Percentage to NCPA

with such benefit being greater than or equal to the benefit that Assignor would have derived had Assignor's Base Resource Energy been scheduled solely for use on its own load; and

WHEREAS, NCPA anticipates taking assignment of additional Western Area Power Administration Base Resource Percentages from other Assignors to likewise provide economic benefits from joint assignment administration greater than or equal to those benefits that individual Assignors would have derived had their Base Resource Energy been scheduled solely for their own uses; and

WHEREAS, NCPA members and other qualified entities assigning their respective Base Resource Percentages to NCPA expect to avoid certain costs associated with Base Resource Energy delivery that would otherwise accrue if each Assignor's Base Resource Energy been scheduled separately and solely for each Assignor's own load; and

WHEREAS, NCPA seeks to equitably allocate a portion of the common savings to Assignor by the terms of this Agreement.

NOW, THEREFORE, in consideration of the covenants, it is agreed hereby as follows:

SECTION 1

Definitions

Whenever used in this Agreement, in either the singular or plural, the following terms shall have the following respective meanings:

- 1.1 Administrative Costs are any general or administrative costs NCPA incurs while performing its duties under this agreement, including but not limited to consulting fees, legal fees, general overhead, and expenses related thereto.

- 1.2 Agreement is this contract and attached Schedule(s).
- 1.3 Assignment Contract is the contract between NCPA and the Assignor and approved by the Western Area Power Administration, providing for the assignment of Assignor's Base Resource Percentage to NCPA.
- 1.4 Assignor is a party to an Assignment Contract assigning its Base Resource Percentage to NCPA. Assignor is also a signatory to this Assignment Administration Agreement with NCPA.
- 1.5 Base Resource Percentage is Assignor's percentage share of Western Area Power Administration Base Resource under its Base Resource Contract 00-SNR-00327, prior to assigning the Base Resource Percentage to NCPA. Base Resource Percentage may be modified by Western from time to time as contemplated in Base Resource Contract 00-SNR-00327.
- 1.6 Base Resource Energy is the energy and associated ancillary services made available from the Western Area Power Administration on a daily basis as a result of Assignor's Base Resource Percentage. Base Resource Energy also refers to associated electrical capacity made available from the Western Area Power Administration on a daily, monthly or annual basis as a result of Assignor's Base Resource Percentage.

SECTION 2

NCPA Duties and Authorities

- 2.1 The NCPA Commission, acting after obtaining the unanimous affirmative vote of those Commissioners representing each and every Assignor may:
- (a) Act on behalf of NCPA in carrying out any action properly taken pursuant to the provisions of this Agreement. The Commission, or its designee, shall have the authority on behalf of all NCPA to execute any contract, lease or other instrument which has been properly authorized pursuant to this Agreement including: documents supplementing this Agreement, contracts with Non-Parties, contracts relating the Base Resource such as physical

hydro production hedging contracts for interested Assignors and related items;

- (b) Establish standards, in addition to the authority provided in other sections of this Agreement, with respect to any aspect of arrangements between NCPA and the Assignors, which it determines may adversely affect the administration of the Base Resource Percentage Assignment, and to review such arrangements to determine compliance with such standards;
- (c) In addition, the Commission shall have such further powers and duties as are conferred or imposed upon it by other sections of this Agreement.

2.2 The General Manager and the NCPA staff shall have the duties and authorities as necessary to provide for the day-to-day administration of this Agreement, which include but are not limited to actions to:

- (a) Carry out directions of the Commission with respect to matters related to this Agreement;
- (b) Coordinate interchange accounting and maintain records pertaining to the administration of the Base Resource Percentage assignments, including determination of the volume of power delivered to each Assignor for each calendar month;
- (c) Prepare and submit a proposed budget for assignment-related expenditures for the ensuing fiscal year to appropriate committees and the Commission, on such schedule as established by the Commission or consistent with the NCPA annual budget process;

- (d) Furnish such information and reports as are required to keep the Assignor informed of the outlook for, the functioning of, and results achieved with regard to the assignments of Base Resource Percentages;
- (e) Implement operating principles, practices and procedures as they relate to the economy of operation of the Base Resource Percentage assignments;
- (f) Calculate costs for the Base Resource Percentage Assignment transactions among the Assignors;
- (g) Develop a billing system for the Base Resource Percentage Assignment for transactions pursuant to this Agreement, including criteria, rules, and standards thereto;
- (h) Issue an invoice to Assignor for Base Resource Percentage Assignment related costs;
- (i) Assist Assignor in making sales and purchases of generation and transmission capacity related to their assignment of the Base Resource Percentage;
- (j) Initiate and make long and short-range planning studies with respect to the Western Area Power Administration Base Resource Percentage. These studies shall be updated annually or at such other times as the Commission may direct;

- (k) Develop any needed generation and transmission resource plans related to the Base Resource Percentage assignments in consultation with Assignor's staff;

- 2.3 The General Manager and the NCPA staff shall act on behalf of Assignor, as directed in writing by Assignor, and in accordance with the Assignor's power purchasing statutes, regulations, rules, ordinances, and charter, as they apply, to subscribe to additional Western products other than Base Resource, that Western chooses to market in proportion to each of its customers' Base Resource Percentage.

SECTION 3

Assignor Duties

- 3.1 Assignor shall cooperate with NCPA in providing its relevant load and resource data to NCPA in a timely fashion to insure that NCPA can maximize the value of the assigned Base Resource Percentage.
- 3.2 Assignor shall also indemnify NCPA in regard to assignment administration services provided by NCPA under this Agreement.
- 3.3 Assignor shall pay NCPA for all costs and charges incurred under this Agreement in accordance with Section 11.

SECTION 4

Allocations

- 4.1. Western Allocations Excluded from this Agreement
 - 4.1.1. All benefits, costs, and energy schedules associated with the CVP Corporation's Energy Exchange Arrangements for Project Use and First

Preference Support program shall not be subject to this Agreement. This exclusion applies to all Bank Energy and Bank Return Energy schedules allocated by the CVP Corporation.

4.1.2. Western allocations that are not assigned to NCPA will not be subject to this Agreement and will be scheduled only for the benefit of the NCPA member receiving the allocation.

4.1.3 An NCPA member who does not assign its Base Resource Percentage to NCPA shall not be subject to this Agreement.

4.2. Determination of Benefits

In order to determine the benefits of assigning each member's Base Resource Percentage to NCPA for joint administration, NCPA staff will first estimate the value of the Base Resource Percentage as if no assignments had been executed, then compare this value with the value obtained through NCPA's joint administration of all assigned Base Resource Percentages. The computational algorithm for this comparison is contained in Schedule A to this Agreement; however, such algorithm, as it may be refined from time to time by the NCPA Commission, shall be consistent with the following policy goals agreed to by each Assignor, namely: (i) Western Base Resource Energy shall be fully utilized to the maximum extent possible; (ii) subject to (i) above, Western Base Resource Energy shall be scheduled during those time periods that maximize its value; and (iii) consistent with scheduling Western Base Resource Energy to maximize its overall net value, NCPA will also seek to reasonably minimize associated transmission-related and other applicable costs. NCPA staff shall monitor the results of the algorithm contained in Schedule A and recommend corrective action to be taken if and when the application of this procedure results in allocations of benefits and costs to Assignor inconsistent with the policy goals and allocation parameters described in this section 4.

4.3 Allocation of Benefits

4.3.1 For each monthly accounting period, all benefits attained through NCPA's administration of assigned Base Resource Percentages shall be allocated to Assignor proportionately to (i) the number of days that its Assignment Administration Agreement is in force that month, i.e., the fraction of the month Agreement is in force, and (ii) the amount of Base Resource Energy attributed to Assignor hereunder.

4.3.1.1 One-half of any benefits shall be allocated to that group of Assignors providing Base Resource Energy in excess of their own load (Group E), and the remaining one-half of benefits shall be allocated to that group of Assignors whose load exceeds the Base Resource Energy they have assigned (Group S).

4.3.2 Each individual Assignor within either Group E or Group S shall receive a share of the group's benefit proportional to its contribution to the group's excess energy or excess load respectively.

SECTION 5

Resource Planning

5.1 NCPA staff, in consultation with Assignor's staff, shall perform necessary forecasts, studies and resource planning related to maximizing the overall value of the integrated Base Resource Percentage assignments. NCPA Staff shall perform member-specific forecasts, studies and resource plans for the benefit of the individual Assignor so requesting only upon receiving a detailed written request from Assignor particularly describing the task requested to be performed as part of a duly authorized Member Services Agreement between the individual Assignor and NCPA.

SECTION 6

Resource Sale and Purchase

- 6.1 Sales and Transfers to Non-Parties. Sales or transfers of Base Resource Energy to entities not assigning a Base Resource Percentage to NCPA under the authorization of the Western Area Power Administration are strictly prohibited without the express written consent of the Western Area Power Administration.
- 6.2 Penalties. Any Penalties incurred for violation of section 6.1 shall be solely responsibility of the Assignor found to be in noncompliance with the above section.

SECTION 7

O&M Funding and Restoration

- 7.1 NCPA shall pass through to Assignor on an as-billed basis any bills and credits related to Western Area Power Administration O&M Funding and Central Valley Project Improvement Act Restoration Funding as part of its normal billing procedure described in Section 11 below.

SECTION 8

Central Dispatch and Scheduling Services

- 8.1 Central Dispatch. Each Assignor shall, to the fullest extent practicable, subject its Base Resource Percentage to the central dispatch of the Northern California Power Agency. The objectives of the Pool central dispatch with respect to the Base Resource Percentage shall be as follows:
- (a) to supply the capacity and energy requirements of the combined Assignors at the lowest practicable cost;
 - (b) to accomplish the requirements of (a), above, in a reliable and safe manner.

- 8.2 Base Resource Scheduling. NCPA and Assignor shall cooperate to meet each applicable control area's scheduling timelines and protocols to maximize the value of the assigned Base Resource Percentages, and correspondingly minimize related transmission costs.

SECTION 9

Accounting

- 9.1 Records and Accounts. NCPA shall keep accurate records and accounts related to the Base Resource Percentage assignment, and for each identifiable service that it supplies to Assignor through this Agreement or through any related agreement which may be entered into between NCPA and Assignor. Records and accounts shall be kept in general accordance with the Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act (see 18 CFR 101), as prescribed by the Federal Energy Regulatory Commission and amended from time to time. Such records and accounts shall be made available to Assignor for inspection at any reasonable time. All records are subject to audit at the written request of Assignor provided that such audits shall be conducted at the expense of the Assignor(s) requesting them.

SECTION 10

Metering

- 10.1 Each Assignor's duties with respect to metering under this Agreement shall be performed in accordance with protocols and standards of its respective control area. Differences in control area standards with respect to metering, if any, shall be resolved initially through internal discussions between the Assignors; and if the Assignors are unable to reach an agreement in this regard, then the matter shall be resolved through the dispute resolution procedures contained in Section 22 below.

SECTION 11

Billing

11.1 Applicability. Each month NCPA shall invoice Assignor in accordance with this terms of this Agreement. Invoices amounts for Base Resource related costs will initially be determined according to Assignor's actual Base Resource Percentage, subject to the true-up procedure described below. Bills from NCPA to Assignor shall be rendered and collected by NCPA pursuant to requirements and procedures provided in this Agreement as follows. Amounts shown on invoice are due and payable thirty (30) days after the date of the billing statement, except that any invoice coming due on a Friday, holiday, or weekend shall be adjusted by NCPA to come due on the closest following workday, as applicable. Assignor shall timely pay to NCPA all amounts of money shown on an NPCA invoice or billing statement completely, without setoff, for any service, product, electrical capacity or energy, any Base Resource Energy, contracts related to the Base Resource, Administrative Costs, Western Area Power Administration O&M Funding and Central Valley Project Improvement Act Restoration Funding, any consulting or legal fee or expense associated with this Agreement, and any other cost, liability, or expense incurred by NCPA pursuant to this Agreement.

Any amount due and payable but not paid by the Assignor within thirty (30) days following the date of the invoice shall bear interest at the per annum prime rate (or reference rate) of the Bank of America NT & SA then in effect, plus two (2) percent per annum computed on a daily basis until paid.

NCPA shall mail all invoices within 24 hours of the invoice date thereon. NCPA will alert Assignor's designated representative via telephone of any payment not received within 36 hours after the due date. The postmark date on the envelope containing payment by check shall be used to determine timeliness of payment,

except that payments received later than seven (7) days after the due date shall be declared late without regard to postmark date.

Preferred Payment Method

Payment via wire transfer is the preferred method of making payments to NCPA. For wire transfers, the transaction date shall be used to determine the timeliness of payments.

NCPA Credit Memoranda issued to any Assignor do not bear interest during the period such credits remain outstanding but unapplied. It is each Assignor's responsibility to apply the credits to subsequent NCPA billings on a timely basis.

A. Disputes.

If An Assignor does not dispute the correctness of any billing statement in writing, within the time provided, the billing statement shall be deemed to be correct. If Assignor disputes the correctness of any billing statement by NCPA, it shall pay the amount claimed when due. If the bill is determined to be incorrect, NCPA will issue a corrected bill and refund any amount which may be due Assignor (including any interest paid by Assignor).

If NCPA and Assignor fail to agree on the correctness of a bill within thirty (30) days after the Assignor has submitted a written request for explanation, the General Manager shall promptly submit the dispute to the NCPA Commission for resolution. If the Commission and Assignor fail to agree on the correctness of a bill within thirty (30) days, the dispute shall then be resolved under the procedures set forth in Section 22 of this Agreement.

B. Invoices and Invoice True-Up

NCPA invoices for all costs will be adjusted or trued-up as provided below. True-up of invoices will be performed throughout the year, as practicable; but,

not less than quarterly. At the end of each fiscal year, as soon as the annual audit is complete and actual data is available, NCPA shall true-up all invoices based on actual cost data and actual billing determinants. True-up amounts will be invoiced or credited to the Assignor, as applicable. True-up amounts for Base Resource related costs will be based upon an adjusted Base Resource Percentage attributable to Assignor in accordance with Schedule A. Credit amounts will be deposited in the appropriate member's individual account in the General Operating Reserve.

- 11.2 Appeals. In the event of extenuating circumstances, should Assignor make a late payment including interest, it may then make a written appeal to the Commission for relief from such interest for reasonable cause.
- 11.3 Audit Rights. Assignor shall have the right to audit any data created or maintained by NCPA pursuant to this Agreement on thirty (30) days written notice unless otherwise agreed by such Assignor and NCPA.
- 11.4 Assignor Covenants. Each Assignor covenants and agrees (a) to establish and collect rates and charges for the services and commodities provided by its Electric System sufficient to provide Revenues adequate to meet its obligations under this Agreement and to pay all other amounts payable from, and all lawful charges against or liens upon, the Revenues; (b) to make payments under this Agreement from the Revenues of, and as an operating expense of, its electric system; (c) to make payments under this Agreement whether or not there is an interruption in, interference with, or reduction or suspension of services provided under this Agreement (such payments are not subject to any reduction, whether by offset or otherwise, and regardless of whether any dispute exists); and (d) to operate its electric system and the business in connection therewith in an efficient manner and at reasonable cost and to maintain its electric system in good repair, working order, and condition.

SECTION 12

Administrative Cost Allocation

- 12.1 A proportionate share of administrative costs incurred by NCPA under this Agreement shall be allocated and invoiced to Assignor. The allocation of these costs will be based on two determinants: Assignor's Base Resource Percentage and the benefits received by Assignor hereunder. An annual true-up shall be performed to finally settle on administrative cost allocations to each Assignor for the prior year.

SECTION 13

Other Agreements

- 13.1 Joint Powers Agreement. This Agreement complements the Joint Powers Agreement. It extends the responsibilities and authorities assigned to the Commission and to the General Manager under terms of the Joint Powers Agreement.
- 13.2 Pooling Agreement. This Agreement supersedes the Pooling Agreement, and takes precedence with respect with respect to issues addressed in this Agreement relating to the receipt, delivery, scheduling, accounting and billing for all Western Area Power Administration Base Resource Energy to which Assignor is entitled for as long as this Agreement is in effect.
- 13.3 Other Agreements. With the exception of Third Phase Agreements and Project Indentures of Trust, this Agreement shall upon its effective date, take precedence

with respect to issues addressed in this Agreement and also addressed in any other agreement between Assignor and NCPA. With respect to issues common to Third Phase Agreements and this Agreement, Third Phase Agreements shall take precedence over this Agreement.

SECTION 14

Western Electricity Coordinating Council

- 14.1 Consistency with Western Electricity Coordinating Council Standards, Criteria and Rules. The standards, criteria and rules adopted by NCPA committees and by NCPA under this Agreement shall be consistent with those adopted by the Western Electricity Coordinating Council (WECC).

SECTION 15

Term of Agreement

- 15.1 Effective Date. This Agreement shall become effective on the date on which it has been duly executed and delivered to NCPA by Assignor.
- 15.2 Termination. Of necessity, the term of this Agreement must coincide with term of the underlying Assignment Contract. More specifically, this Agreement shall terminate automatically upon the termination of the Assignment Contract. Notwithstanding termination of this Agreement, any financial obligations incurred by Assignor hereunder shall survive until satisfied.

Assignor shall not be obligated to compensate NCPA, or any other Assignors, for loss of any benefits that would have accrued to NCPA, or other Assignors, if Assignor had not terminated this Agreement. Nor shall NCPA, or any other Base Resource Percentage Assignor, be obligated to compensate Assignor for any

benefits that accrue to the remaining Assignors because of the termination. Reallocation of the costs and benefits of the Base Resource Percentage assignment after Assignor has withdrawn shall not give rise to any claim against Assignor by NCPA or other Assignors. Nor shall NCPA or any of the remaining Assignors be obligated to compensate Assignor for any benefits that accrue to the remaining Assignors because of such a reallocation of costs and benefits.

SECTION 16

Notices

- 16.1 Notice. Any notice, demand or request required or authorized by this Agreement shall be in writing and shall either be personally delivered or transmitted to the Assignor at the address shown on the signature pages hereof.

SECTION 17

Waiver of Defaults

- 17.1 Waiver. No waiver of the performance by Assignor of any obligation under this Agreement with respect to any default or any other matter arising in connection with this Agreement shall be effective unless agreed to by both Assignor and NCPA in writing. Any such waiver in any particular instance shall not be deemed a waiver with respect to any subsequent performance, default or matter.

SECTION 18

Uncontrollable Forces

- 18.1 Uncontrollable Forces. An Assignor shall not be considered to be in default in respect of any obligation hereunder if prevented from fulfilling such obligation by reason of uncontrollable forces. The term "uncontrollable forces" shall be deemed for the purposes hereof to mean storm, flood, lightning, earthquake, tsunami, fire, explosion, failure of facilities not due to lack of proper care or maintenance, civil disturbance, labor dispute, sabotage, war, national emergency, restraint by court or public authority, or other causes beyond the control of the affected Assignor which such Assignor could not reasonably have been expected to avoid by exercise of due diligence and foresight. Any Assignor affected by an uncontrollable force shall use due diligence to place itself in a position to fulfill its obligations hereunder and if unable to fulfill any obligation by reason of an uncontrollable force, such Assignor shall exercise due diligence to remove such disability with reasonable dispatch. Nothing in this Agreement shall require an Assignor to settle or compromise a labor dispute.

SECTION 19

Liability

- 19.1 Liability. All of the privileges and immunities from liabilities, exemptions from laws, ordinances and rules, all pension, relief, disability, workers' compensation, and other benefits which apply to the activity of officers, agents or employees of any public agency which is an Assignor to this Agreement, while engaged in the performance of any of their functions or duties, shall apply to them in the same degree and extent when performing their respective public duties in connection with this Agreement.
- 19.2 Division of Responsibility. Neither the General Manager, NCPA, an Assignor, nor an entity acting on behalf of Assignor, shall be responsible for the transmission, control, use, or application of electric capacity and energy provided under the this Agreement on the receiving Assignor's side of such Assignor's point of

interconnection and shall not, in any event, be liable for damage or injury to any person or property whatsoever, arising, accruing, or resulting from, in any manner, the receiving, transmission, control, use, application, or distribution by NCPA, or Assignor, or a corporation acting on behalf of NCPA or Assignor, of said capacity and energy on the receiving Assignor's side of such Assignor's point of interconnection.

19.3 Indemnity. Each Assignor shall indemnify, defend, hold and save NCPA and the other Assignors harmless from any and all loss or damage sustained to any person or property and from any and all liability incurred by reason of any act or performance, or failure to act or perform, on the part of NCPA or the other Assignors. Such indemnification shall hold harmless the one indemnified, the members of its governing body, its officers, agents and employees, from and against any and all liability of whatever nature, including strict liability and any and all losses and damages, including consequential damages and injuries, costs, and expenses, including expenses incurred in connection with investigating any claim or defending any action, and reasonable attorney's fees.

19.4 Counsel Representation. Pursuant to the provisions of California Civil Code Section 1717 (a), Assignor and NCPA were represented by counsel in the negotiation and execution of this Agreement as indicated below. In light of this representation, those terms of this Agreement which dictate the responsibility for bearing any attorney's fees incurred in the litigation or settlement in a manner inconsistent with the provisions of Section 19.3 were intentionally so drafted by the Assignor and NCPA.

SECTION 20

Reports and Records

20.1 Reports. Assignor and NCPA shall each prepare and make available to the other all data necessary for each to (i) perform all duties required under this Agreement, and (ii) verify the accuracy of all amounts due and payable under this agreement. Examples of data to be made available by NCPA at Assignor's request include, but are not limited to:

- a. All load data relevant to Assignor's assignment of its Base Resource Percentage to NCPA.
- b. All ISO cost information relevant to determining the cost savings obtained by Assignor due to its assignment of its Base Resource Percentage to NCPA.
- c. Such additional reports and records as are reasonably requested in writing; provided however, that the Assignor so requesting shall reimburse the other for reports and records not essentially completed or kept in the ordinary course of business.

20.2 Reports to Other Agencies. NCPA will submit such reports and records which are required or may be required by the California Energy Commission, the Western Area Power Administration, the California Independent System Operator, the Federal Energy Regulatory Commission or other such local, state or federal agencies, as such reports and records are required for NCPA to fulfill its obligations under this Agreement.

SECTION 21

Assignment of Agreement

21.1 Limitations. This Agreement shall inure to the benefit of and shall be binding upon the respective successors and assignees of the Parties to this Agreement;

provided, however, that, except as provided in the event of a default, and, except for the assignment by NCPA authorized hereby, neither this Agreement nor any interest herein shall be transferred or assigned by Assignor hereto except with the consent in writing of the NCPA provided, however, that such consent shall not be withheld unreasonably. No assignment or transfer of this Agreement shall relieve Assignor of any obligation hereunder, except as otherwise so provided herein.

SECTION 22

Settlement of Disputes and Arbitration

- 22.1 Settlement of Disputes. NCPA and Assignor agree to make best efforts to settle all disputes among themselves connected with this Agreement as a matter of normal business under this Agreement. The procedures set forth in the remainder of this Section shall apply to all disputes that cannot be settled by NCPA and Assignor; provided, that the provisions of Section 11.4 shall first apply to all disputes involving invoice prepared by NCPA. Regarding agenda items arising from this bilateral Agreement, for which there is a potential legal conflict of interests between the Assignor and NCPA, the Assignor's designated Commission member shall abstain from voting on such items at NCPA Commission meetings.
- 22.2 Role of the Commission. All disputes connected with this Agreement that cannot be resolved informally among the respective staffs shall be submitted to the Commission upon the written request of one or more Assignors. If the Commission cannot resolve a dispute within thirty (30) days after the dispute is submitted to it, Assignor may commence binding arbitration pursuant to Section 22.3. The Commission may suggest that a mediator with experience in the utility industry be asked to assist in such negotiations. The arbitration procedure provided for in 22.3 shall be used only as a last resort in the event that the dispute cannot be resolved through discussion, negotiations and mediation.

22.3 Arbitration. A dispute that cannot be settled pursuant to Section 22.2 shall be settled by binding arbitration. Immediately after the conclusion of arbitration, Assignor and NCPA shall take whatever action is required to comply with the arbitrator's decision. Judgment upon the award may be entered in any court having jurisdiction.

22.4 Expedited Dispute Resolution Procedure. If at any time Assignor or NCPA believes that the other has breached or may breach this Agreement by some disputed action, which dispute can not be timely resolved under procedures set forth in Section 22.2, written notice shall be promptly provided to the General Manager. Such notice shall provide a detailed explanation of the dispute and the position(s) of the Parties to the dispute. The notice shall also provide an explanation of why the dispute cannot be timely resolved under the procedures set forth in Section 22.2.

Upon receipt of such notice, the General Manager and the Utility Director of Assignor shall consult to determine what actions are appropriate to effect a resolution of the dispute. In the event that the General Manager and the Utility Director cannot effect a resolution of the dispute satisfactory to all Parties within five (5) working days of receipt of such notice, the General Manager shall immediately notify the Chairman of the Commission and provide copies of the notice, together with any comments of the General Manager and the Utility Director, concerning the dispute.

Upon receipt of such notice, the Chairman of the Commission shall either place the dispute on the agenda of the next regular meeting of the Commission for the purpose of having the Commission mediate the dispute or if deemed necessary by the Chairman, due to the need for timely resolution, call a special meeting of the Commission for the purpose of having the Commission mediate the dispute. If the

Commission cannot effect a resolution of the dispute at such meetings, the Parties shall immediately invoke the provisions of Section 22.3.

SECTION 23

Amendments

- 23.1 Amendments. Unless otherwise set forth in this Section, this Agreement may be amended only by written instrument executed by Assignor and NCPA with the same formality as this Agreement; provided however that the Schedule(s) to this Agreement may be modified through a unanimous vote of the Assignors' NCPA Commission members provided that each Assignor's commission representative is present and votes for the passage of the amendment.

SECTION 24

Severability

- 24.1 Severability. In the event that any of the terms, covenants or conditions of this Agreement or the application of any such term, covenant or condition, shall be held invalid as to any person or circumstance by any court having jurisdiction, all other terms, covenants or conditions of this Agreement and their application shall not be effected thereby, but shall remain in force and affect unless the court holds that such provisions are not severable from all other provisions of this Agreement.

SECTION 25
Governing Law

25.1 Governing Law. This Agreement shall be interpreted, governed by, and construed under the laws of the State of California.

NORTHERN CALIFORNIA POWER AGENCY

Approved as to form:

By: _____ By: _____

Title: _____ Title: _____

Address for Notices: _____

CITY OF LODI

By: _____

Janet S. Keeter
Title: _____
Interim City Manager

Attest: _____ Address: _____ P.O. Box 3006

By: _____ Lodi, CA 95241-1910
Susan J. Blackston, City Clerk

Date: _____

Approved as to Form:

By: _____
D. Stephen Schwabauer, City Attorney

Schedule A
The Allocation Algorithm

A-1 Allocation of Benefits other than Transmission Cost Savings

Steps 1-9 determine each Assignor's monthly percentage allocator that will be used to distribute benefits of pooling. Step 10 uses that percentage allocator to distribute the benefits.

All computational steps in this allocation algorithm will be implemented in a manner that is consistent with NCPA staff's goal of scheduling the assigned BR to maximize the economic market value of the BR.

Step 1: Constrained own-load optimal dispatch: NCPA staff shall perform after-the-fact monthly "own-load" optimal dispatch of each Assignor's BR to establish the value of the individual BR allocation to each Assignor pre-assignments. The own-load dispatch shall be constrained by hourly loads equal to each Assignor's gross hourly loads multiplied by a forecast factor of 1.00 such that BR energy schedules cannot exceed 100% of load in any hour. In addition, revenues that the Assignor would have received from Western through the re-marketing of its "stranded" energy allocations (the portion of monthly energy allocations that cannot be utilized by the Assignor) will be added to this value.

$$\text{Value_O/L(i)} = \text{O/L dispatch(i)} * \text{MCP} + \text{Stranded_Revenue(i)}$$

where: Value_O/L is the BR energy value in the own-load dispatch,
 (i) represents each Assignor,
 O/L dispatch is the hourly own-load schedule of BR,
 MCP is the hourly NCPA Pool Market Clearing Price,
and, Stranded Revenue is the estimated Western energy re-marketing
 revenue.

Step 2: Net value of own-load constrained dispatch: All volumetric Western costs will be deducted from the values computed in Step 1. Fixed monthly BR costs and other fixed costs are not included in this step.

$$\text{NetValue_O/L(i)} = \text{Value_O/L(i)} - \text{VarCost_O/L(i)}$$

where: NetValue_O/L is the own-load BR value adjusted for variable costs,
and,

VarCost_O/L is all variable cost associated with Western BR, including exchange purchase costs, that each Assignor would have paid to Western to schedule its individual BR allocation.

Step 3: Unconstrained own-load optimal dispatch: Perform individual optimal dispatches without load constraints. The difference in net value between this unconstrained net value and the NetValue_O/L of Step 2 shall be the allocation determinant for 50% of the assignment benefit computed in Step 7.

$$\text{NetBen_O/L}(i) = \text{Unconstrained_Disp}(i) * \text{MCP} - \text{VarCostPool_O/L}(i) - \text{NetValue_O/L}(i)$$

$$\text{Allocator_E}(i) = \text{NetBen_O/L}(i) / (\text{Sum of NetBen_O/L}(i))$$

where: NetBen_O/L is the net value increase when the load constraint is removed,
Unconstrained_Disp is the optimized BR schedule without load constraint,
VarCostPool_O/L is the variable cost incurred without load limits,
and, Allocator_E is the energy provider BR value allocator used in step 7.

Step 4: Head-room value: Compute the value of load “head-room” provided by each Assignor during the month. Head-room value is a function of each Assignor’s net load (net of constrained own-load BR schedules and other energy schedules subject to federal power marketing restrictions) in each time-step when NCPA’s actual BR schedule exceeds the sum of the Assignors’ own-load BR energy schedules.

In each hourly time step that NCPA’s actual BR schedule exceeds the sum of O/L_dispatch in step 1, the HR_Value for each Assignor (i) is computed as:

$$\text{HR_MW}(i) = \text{Max}[0, \text{Load}(i) - \text{O/L_dispatch}(i) - \text{Other_Western}(i)]$$

$$\text{HR_Value}(i) = \text{HR_MW}(i) / (\text{sum of HR_MW}(i)) * (\text{NCPA_BR} - \text{sum of O/L_dispatch}(i)) * \text{MCP}$$

where: HR_MW is the net-Western load “head room” ,
Other_Western is the schedule of non-BR Western energy,
HR_Value is the proportional allocation of usable head room valuation,
and, NCPA_BR is NCPA’s actual schedule of Western BR.

Step 5: Allocators for head-room providers: Compute the allocation determinant for 50% of the pooling benefit computed in step 7 on the basis of HR_Value for the month.

$$\text{Allocator_L}(i) = \text{HR_Value}(i) / (\text{sum of HR_Value}(i))$$

Where Allocator_L is the head-room provider value allocator used in step 7.

Step 6: **Net benefit of BR assignments:** Compute the net benefit of BR assignments to NCPA as the difference between MCP energy value of NCPA's actual BR schedule -minus variable BR costs – minus the sum of NetValue_O/L for the month. If the result is positive, then proceed to step 7. If negative, proceed to step 8.

$$\text{Net_Ben} = \text{NCPA_BR} * \text{MCP} + \text{Stranded_NCPA} - \text{VC_NCPA} - (\text{sum of NetValue_O/L}(i))$$

where: Net_Ben is the increase (or decrease) in BR value due to assignments,
Stranded_NCPA is actual re-marketed energy revenues,
VC_NCPA is NCPA's variable BR costs including exchange energy purchase costs,
 and, Stranded_NCPA is revenues received for energy re-marketed by Western for NCPA.

Step 7 (Only if Net_Ben is positive) **Allocate positive Net_Ben:** Allocate one-half of the Net_Ben using Allocator_E and one-half using Allocator_L. Proceed to Step 9.

$$\text{Assignor_Ben}(i) = \text{Net_Ben} * (\text{Allocator_E}(i) + \text{Allocator_L}(i)) / 2$$

Where Assignor_Ben is each Assignor's share of NCPA's assignment benefit.

Step 8 (Only if Net_Benefit is less than or equals zero) **Zero pooling benefit:** Set Assignor_Benefit value to zero for each Assignor. Proceed to Step 9.

$$\text{Assignor_Ben}(i) = 0.$$

Step 9: **Assign constant adjusted BR percentage shares for month:** Determine each Assignor's percentage share of NCPA's BR by normalizing the sum of each Assignor's Assignor_Ben and NetValue_O/L. Each Assignor's share of NCPA's BR schedules in each time-step during the month shall be equal to the percentage computed in this step. (For example, if a member's share in a given month is calculated as 15% in this step, that member is assigned 15% of actual Western schedules in each time-step during that month.)

$$\text{BR_Pct}(i) = [\text{Assignor_Ben}(i) + \text{NetValue_O/L}(i)] / \text{sum of } [\text{Assignor_Ben}(i) + \text{NetValue_O/L}(i)]$$

where BR_Pct(i) is each Assignor's share of NCPA BR schedules and associated benefits (e.g., re-marketed energy revenues).

Step 10: Assign BR costs: Assign any difference between the actual NCPA_VCost (NCPA's actual BR variable costs) and the sum of the VarCost_O/L in the month, positive or negative, will be distributed to each Assignor using BR_Pct(i). Each Assignor's Western BR costs for the month (to be billed by NCPA) will equal the respective VarCost_O/L adjusted by this step added to the Assignor's share of fixed BR costs.

$$\text{BR_Cost}(i) = \text{VarCost_O/L}(i) + \text{FixedCost_O/L}(i) -$$

$$\text{BR_Pct}(i) * [\text{NCPA_Vcost} - (\text{sum of VarCost_O/L}(i))]$$

where: BR_Cost(i) is each Assignor's total monthly Base Resource cost, and, FixedCost_O/L(i) is each Assignor's fixed Western BR cost.

NCPA staff shall regularly monitor the results of this procedure and recommend corrective action to be taken if and when the application of this procedure results in counter-intuitive and/or unfair allocations of benefits and costs to the Assignors.

A-2 Transmission Cost Savings Allocations

After each month, NCPA staff will compute the difference between NCPA BR energy physically scheduled through an Assignor that is directly connected to Western's transmission system and that Assignor's O/L_dispatch value computed as specified in Step 1. If this difference is positive, the direct-connect Assignor saved transmission charges and CAISO costs (e.g., GMC, low and high voltage access, etc.), to the extent that the over-scheduled BR displaced CAISO energy, by physically scheduling another Assignor's BR energy. The value of the transmission charge and CAISO cost savings will be determined and split on a 50/50 basis with the non-direct-connect Assignors whose BR energy was scheduled to the direct-connect Assignor(s).

The direct-connect Assignor directly receives the benefit of avoiding transmission charges and CAISO costs to the extent that the direct-connect Assignor actually displaced CAISO energy imports. The direct-connect Assignor will pay half of the transmission and CAISO savings that is achieved by scheduling other Assignor's shares of BR to its load (as determined by NCPA staff) to the non-direct-connect Assignors. These payments will be allocated to the non-direct-connect Assignors in proportion to their adjusted BR_Pct (from Step 9).

RESOLUTION NO. 2004-252

A RESOLUTION OF THE LODI CITY COUNCIL
AUTHORIZING THE CITY MANAGER TO EXECUTE
ELECTRIC SERVICE BASE RESOURCE PERCENTAGE
AGREEMENT NO. 00-SNR-00327 FOR WESTERN AREA
POWER ADMINISTRATION BETWEEN NORTHERN
CALIFORNIA POWER AGENCY AND THE CITY OF LODI

=====

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize the City Manager to execute Electric Service Base Resource Percentage Agreement No. 00-SNR-00327 for Western Area Power Administration between Northern California Power Agency and the City of Lodi.

Dated: November 17, 2004

=====

I hereby certify that Resolution No. 2004-252 was passed and adopted by the Lodi City Council in a regular meeting held November 17, 2004, by the following vote:

AYES: COUNCIL MEMBERS – Beckman, Hitchcock, Howard, Land, and Mayor Hansen

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None



SUSAN J. BLACKSTON
City Clerk

REQUEST FOR ASSIGNMENT OF
CITY OF LODI'S
BASE RESOURCE PERCENTAGE
TO NORTHERN CALIFORNIA POWER AGENCY

1. **BACKGROUND:**

1.1 The City of Lodi (Lodi) is a municipal corporation, organized and existing under the laws of the State of California.

1.2 Lodi has entered into Contract 00-SNR-00327, dated August 16, 2000, with the Western Area Power Administration (Western), which provides Lodi with a percentage of Western's Base Resource power beginning January 2005.

1.3 The Northern California Power Agency (NCPA) is a joint powers agency, organized and existing under the laws of the State of California.

1.4 Lodi is a member of NCPA.

1.5 As a member of NCPA, Lodi desires to have Western assign Lodi's Base Resource Percentage under Contract 00-SNR-00327 to NCPA so that NCPA may create a power resource portfolio for the mutual benefit of qualified NCPA members.

2. **ASSIGNMENT OF BASE RESOURCE PERCENTAGE:**

2.1 Lodi hereby requests assignment of its 0.49049 percentage of the Base Resource under Exhibit A to Contract 00-SNR-00327 to NCPA.

2.2 NCPA is agreeable to taking responsibility for Lodi's 0.49049 percentage of the Base Resource.

2.3 Lodi shall retain its Base Resource Contract 00-SNR-000327 with a 0.000 percent of the Base Resource during the term of assignment to NCPA.

2.4 Any allocation changes made pursuant to the 2004 Power Marketing Plan shall apply to the Base Resource Percentage referred to in Section 2.1 of this Assignment, regardless of the contract under which the allocation is being administered.

2.5 No action will be required of Lodi under Contract 00-SNR-00327 during the time that NCPA is holding Lodi's Base Resource Percentage under Contract 04-SNR-00782.

- 2.6 The Assignment shall remain in full force and effect until the earlier of:
- 2.6.1 December 31, 2024; or
 - 2.6.2 Sixty (60) days after Western has approved Lodi's written request for reassignment of its Base Resource Percentage, which approval shall not be unreasonably withheld or delayed.

2.7 NCPA and Lodi shall jointly and severally indemnify and hold Western harmless from and against all claims, damages, losses, and expenses, including attorney's fees, arising out of or resulting from the Assignment.

3. **AGREEMENT:**

All parties to the Assignment hereby agree that the Assignment will become effective on the first day of the first month following the date of approval by the Administrator of the Western Area Power Administration or a later date if agreed to by Western and Lodi.

CITY OF LODI

By: _____

Title: _____

Attest:

Address: 1331 South Ham Lane

By: _____

Lodi, CA 95242

Title: _____

Date: _____

NORTHERN CALIFORNIA POWER AGENCY

By: _____

Title: _____

Attest:

Address: 180 Cirby Way

By: _____

Roseville, CA 95678

Title: _____

Date: _____

Assignment 04-SNR-00771

The above Request for Assignment of City of Lodi's Base Resource Percentage under Contract 00-SNR-00327 to the Northern California Power Agency is hereby approved.

Date: _____

Michael S. HacsKaylo
Administrator
Western Area Power Administration